LIBRARY
SUPREME COURT, U.S.

Office-Supreme Court, U. S.
FILED
NOV 30 1951
CLERK

No. 388

In the Supreme Court of the United States

OCTOBER TERM, 1951

LEROY J. ROBERTSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 388

LEROY J. ROBERTSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

1. The Government does not oppose the issuance of a writ of certiorari in the above-entitled case.

2. The decision of the court below conflicts in principle with that of the Court of Appeals for the District of Columbia Circuit in *McDermott* v. *Commissioner*, 150 F. 2d 585, on the question whether the prize received by petitioner constituted taxable income. It should be noted, however, that the conflict of opinion arises only from the distinction, drawn by the majority of the court in the *McDermott* case alone, between prizes paid by or on behalf of tax-exempt organizations

976772—51

and those awarded by commercial entities.[1] There is no dissent in the lower courts from the proposition that contest prizes awarded by business organizations are taxable to the recipients. And in the Government's view,[2] as well as that of the Tax Court[3] and the court below (R. 54), there is no warrant for the distinction drawn by the majority in the *McDermott* case.

3. There is also a conflict in principle between the decision of the court below and that of the Court of Claims in *Williams* v. *United States*, 84 F. Supp. 362 (C. Cls.), with respect to the manner in which the tax on the prize income should be computed under section 107 (b) of the Internal Revenue Code. The issue is whether, under that section, the income, having been earned over a period of 36 months or more and 80 percent or more having been received in one taxable year, should be apportioned over the 3-year period ending with the taxable year in which it was received, or over the period during which the petitioner's

---

[1] A case involving a contest conducted by a tax-exempt organization is now pending for decision by the Court of Appeals for the Fourth Circuit, having been argued on Nov. 5, 1951. *Amirikian* v. *United States*, decided by the district court Mar. 29, 1951 (1951 C. C. H. Tax Serv., par. 9391).

[2] I. T. 3960, 1949–2 Cum. Bull. 13; see also I. T. 4056, 1951–17 Int. Rev. Bull. 2.

[3] *Stein* v. *Commissioner*, 14 T. C. 494; *Waugh* v. *Commissioner*, decided April 5, 1950 (1950 P–H T. C. Memorandum Decisions, par. 50,095).

work was actually composed.[4] (See R. 54–55). In the course of its opinion in the *Williams* case, the Court of Claims observed that it was presented, in respect of the issue under section 107 (b), with an "unusual situation." 84 F. Supp. at 367.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

NOVEMBER 1951.

---

[4] It should be noted that petitioner here testified (R. 22–24) that all the steps necessary to earn the prize had not been taken in the 3-year period to which he would attribute his earnings.